

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: February 5, 2008

Case Number: TSO-0598

This Decision concerns the eligibility of _____ (“the Individual”) for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual’s access authorization should be restored.

I. BACKGROUND

This administrative review proceeding began with the issuance of a notification letter by a Department of Energy (DOE) local security office (LSO), informing the Individual that information in the possession of the DOE created a substantial doubt pertaining to his eligibility for an access authorization.¹ *See* Notification Letter, July 2, 2007.

The notification letter cited various statements made by the Individual during a February 2007 personnel security interview (PSI). DOE Ex. 7. According to the letter, those statements raised concerns that he may have a personality disorder. For example, the Individual discussed several terminations of employment, characterizing each of the terminations as someone else’s fault. DOE Ex. 7 at 40-42, 52-53, 72-75. He also described a former position as an arson investigator as being in “law enforcement,” despite knowing that description may incorrectly lead people to assume he was a police officer. He further stated that he had emergency lights and public address systems on his vehicle. *Id.* at 29, 30-32, 70-71.

As a result of the concerns raised during the PSI, the Individual was referred to a DOE consultant-psychiatrist (“Psychiatrist I”). Psychiatrist I determined that the Individual exhibited qualities indicating a Histrionic Personality Disorder. *Id.* According to the notification letter, this gives rise to a security concern under 10 C.F.R § 710.8(h) (Criterion H) which, in relevant part, pertains to conduct which may cause a significant defect in judgment or reliability. *Id.* Upon receipt of the notification letter, the Individual requested a hearing in this matter. *See* Individual’s Letter,

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

January 22, 2008. Subsequent to the issuance of the notification letter and the request for a hearing, the Individual was evaluated by a second DOE-consulting psychiatrist (Psychiatrist II).²

In his report, the Psychiatrist described the Individual as “self-aggrandizing” and “almost incapable of being candid” and diagnosed the Individual with Narcissistic Personality Disorder. DOE Ex. 12. The Psychiatrist added that this disorder was a “mental condition that could affect [the Individual’s] judgment and reliability.” *Id.*

At the hearing, the Individual, represented by counsel, presented his own testimony as well as the testimony of his wife, four friends, and his priest. The DOE Counsel presented the testimony of one witness: Psychiatrist II.

II. HEARING TESTIMONY

A. The Individual

The Individual discussed his past employment history in extensive detail. Transcript (“Tr.”) at 194-215. He stated that he was terminated from one position because he and a new manager, the company owner’s son, “just disagreed on a lot of things.” Tr. at 195. He stated that, in retrospect, he sees that “it’s obvious that both of us contributed to the [personality] clash.” Tr. at 250. He stated that he was terminated from another position after being investigated for improper use of government telephones. According to the Individual, the investigation cleared him of any impropriety, but his supervisor terminated him for “causing us to be investigated.” Tr. at 201. The Individual added that he and his supervisor “just didn’t quite see eye to eye.” Tr. at 202.

The Individual stated that he was a “certified arson investigator” for a time, and volunteered with a local fire department. Tr. at 196. He stated that as part of his duties, he was given a badge and worked closely with law enforcement. Tr. at 197. The Individual stated during his PSI that he believed that his position as an arson investigator fell within the definition of “law enforcement.” Tr. at 242. He stated that he was not a “full-time, paid law enforcement officer.” *Id.* The Individual also volunteered with a state militia. Tr. at 197. He stated that the state militia is mobilized when an emergency occurs while the state’s national guard is deployed elsewhere. Tr. at 198.

The Individual is a HAM radio enthusiast. Tr. at 217-218. As a result of his interest in radios, he became involved with his county’s emergency management agency (EMA) as a volunteer. Tr. at 219. He stated that, in connection with the EMA, he has emergency lights on his vehicle. He stated that he uses the lights when he is asked to block off a road or otherwise direct traffic at the request of one of the county agencies. Tr. at 220.

According to the Individual, his personal life is very stable, due mostly to his wife. Tr. at 224. His wife is very supportive of his hobbies. *Id.* The Individual also spends time with their children and grandchildren. *Id.*

² In the interim between the issuance of the notification letter and the hearing, Psychiatrist I abruptly retired and was, therefore, unavailable to participate in this proceeding as a witness. Consequently, his evaluation was set aside and the Individual was referred to Psychiatrist II for a new evaluation.

The Individual stated that he plans on seeing a therapist. Tr. at 251. He stated, “it has kind of been brought to my attention some people think there is a problem ... if there is, I need to know what it is and I need that, fixed is not the proper word, but taken care of. And so at this point the best thing for me to do is to go see someone and see what they find and work through that.” *Id.*

B. The Individual’s Wife

The Individual’s wife stated that she has known the Individual for nearly two years and they have been married for one year. Tr. at 170. She stated that the Individual is very “detail-oriented” and very active in their community. Tr. at 173. She stated that the Individual has “deep religious convictions” and is very active in their church. *Id.* For example, the Individual is always willing to be on a church committee. *Id.* She added that she recently learned that the Individual also anonymously donated several hundred dollars a month in order to help maintain the county’s food pantry. Tr. at 174. She also stated that, initially, she found it odd that the Individual had emergency lights on his vehicle. However, when the Individual explained his involvement with the county’s EMA, she understood the need for the lights. Tr. at 192. She added that she has never seen the Individual try to pass himself off as a law enforcement official. Tr. at 176.

The Individual’s wife stated that her life has become more stable since meeting the Individual. Tr. at 178. She stated that he is very reliable and always tries to help her with any problems she may have. Tr. at 178-179. She also stated that, since she has known the Individual, he has not been overly emotional. Tr. at 181. She added that the Individual is reliable and, in her experience with him, has good judgment. Tr. at 180. Finally, she stated that she has never known him to exaggerate his accomplishments. Tr. at 175.

C. The Individual’s Friends

The Individual also presented the testimony of four friends. Three of the Individual’s four friends are also former co-workers.

Friend I, a former co-worker, has known the Individual for approximately 20 years and interacts with the Individual at least once per week. Tr. at 12. Friend I works in personnel security at the same DOE site where the Individual is employed. Tr. at 11. He stated that a key component of his job is to look out for security concerns or threats. Friend I stated that, in all the years he has known the Individual, he has not seen any “aberrant behavior” on the part of the Individual. Tr. at 22. Friend I stated that he has not known the Individual to exaggerate things. Tr. at 23. The Individual has a stable personal environment and is family-oriented. Tr. at 24. Friend I stated that the Individual does not have personality conflicts with his managers and is well-regarded by his co-workers. Tr. at 45.

Friend II has known the Individual since 1991. Although they typically interact only “four to six times a year,” he considers the Individual a good friend. Tr. at 77, 92. He stated that he and the Individual volunteered together in a state militia years ago, but in recent years have had more infrequent interactions. Tr. at 82, 91-92. He stated that the Individual has a very stable home life. Tr. at 88. Friend II described the Individual as very honest and trustworthy. Tr. at 91. He added

that the Individual is civic-minded and spends much time involved with volunteer work. Tr. at 107.

Friend III is also the Individual's supervisor. Tr. at 113. He has known the Individual since the late 1990s and sees him daily at work.. Tr. at 113, 117. Friend III stated that their work unit is "tight knit" and that none of the other employees have raised concerns regarding the Individual. Tr. at 117, 123. He stated that he has not known the Individual to exaggerate his professional accomplishments. Tr. at 122. Friend III described the Individual as reliable and having good judgment. Tr. at 124. He added that he had no concerns regarding the Individual's ability to do his job. *Id.*

Friend IV met the Individual through their church and has known him for approximately three years. Tr. at 140-141. He and the Individual interact at least weekly. Tr. at 149. Friend IV is the emergency coordinator for their county. He is responsible for backing up the county's radio communications in the event of an emergency. Tr. at 146. The Individual is also an emergency management volunteer. *Id.* Friend IV stated that he has asked the Individual to be one of his assistant emergency coordinators because he has seen the Individual exercise "superior" judgment. Tr. at 152. He stated that the Individual is very reliable. Friend IV stated that the Individual has used his car for traffic control at the request of certain local agencies on various occasions. Tr. at 149. Friend IV added that, to the best of his knowledge, the Individual has not exaggerated his experiences when describing them to other people. Tr. at 153. He added that he has never believed the Individual to over-inflate himself; rather, he has gotten the sense that the Individual is uneasy with praise. Tr. at 166-167.

D. The Individual's Priest

The Individual's priest has known him for approximately two years. Tr. at 50. He stated that the Individual is an active member of the congregation and takes on various liturgical responsibilities. Tr. at 52. He socializes with the Individual and his wife on occasion. *Id.* He and the Individual volunteer with the county's emergency management agency. Tr. at 52-54. He stated that the Individual has emergency lights on his car and other "things that you need to go deploy in the field to set up emergency communications" in the event of a disaster or emergency. Tr. at 57. The Individual's priest believes the Individual has good judgment. Tr. at 55. He stated that he has never known the Individual to "exaggerate who he is or what he has done." Tr. at 75.

E. Psychiatrist II

The Psychiatrist testified regarding his evaluation of the Individual. He stated that as part of the evaluation, the Individual completed the Minnesota Multiphasic Personality Inventory, second edition (MMPI-2), twice. Tr. at 289. The first time, the Individual's underreported and the test's validity scales were unacceptable, indicating that the test was unreliable. Therefore, the Psychiatrist administered the MMPI-2 again. On the second administration, the validity scales were appropriate and, therefore, the results of the test were reliable. Tr. at 289-290. According to the Psychiatrist, the Individual's MMPI-2 results indicated a "narcissistic personality disorder" which encompasses lack of insight, defensiveness, and self-aggrandizement. Tr. at 303.

The Psychiatrist described how the Individual's condition could lead to defects in judgment or reliability. He stated that a primary concern is that an individual with narcissistic personality disorder may be prone to creating "a lot of divisiveness" in the workplace. Tr. at 344. Regarding the Individual, the Psychiatrist stated that the Individual has "the vulnerability of becoming pretty defensive, pretty rigid, [and] pretty moralistic." Tr. at 312. The Psychiatrist stated that those qualities likely contributed to the Individual's past employment terminations. The Psychiatrist added, however, that based on the hearing testimony, it appears that the Individual does not exhibit those qualities at present.

The Psychiatrist stated that the Individual has a history of "acting out," but he added that he had "heard enough to really reduce my concern about that history of acting out." Tr. at 346. The Psychiatrist concluded that the Individual was "doing quite well." Tr. at 348. He added that the likelihood of the Individual's personality disorder manifesting itself in a negative manner in the future was "quite low," and he did not believe the Individual was "a significant risk factor at this time, given what I know about him and what I know about risks." Tr. at 347, 348.

III. STANDARD OF REVIEW

The regulations governing the Individual's eligibility for an access authorization are set forth are 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

Under Part 710, the DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the Hearing Officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a).

IV. ANALYSIS

A. The Security Concern – Criterion H

Criterion H pertains to information that a person has “an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h).

In this case, the LSO invoked Criterion H based on the findings of Psychiatrist I that the Individual had a Histrionic Personality Disorder and the Individual’s own statements during his PSI. Although his findings were ultimately set aside due to his retirement, his diagnosis and statement that the disorder could affect the Individual’s judgment and reliability raised concerns under Criterion H. Similarly, a subsequent diagnosis by Psychiatrist II of a Narcissistic Personality Disorder, and his determination that the disorder could cause a defect in the Individual’s judgment and reliability, also raised concerns under Criterion H. In addition, there is little question that the Individual’s statements during his PSI regarding his terminations of employment, his past work as an arson investigator, and his description of his vehicle were troubling. His statements raised concerns regarding a lack of candor and a potential for self-aggrandizement. Such behavior is of concern to the DOE primarily because it raises questions regarding whether that individual will exercise the judgment and discretion expected of security-clearance holders. Consequently, I find that the LSO properly invoked Criterion H in suspending the Individual’s access authorization. Thus, the only remaining issue to be resolved is whether the Individual has adequately mitigated the security concerns.

B. Mitigating Factors

The adjudicative guidelines discuss ways to mitigate security concerns involving mental disorders or conditions demonstrating defects in judgment or reliability. One way is a “recent opinion by a duly qualified mental health professional ... that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation.” *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (the Adjudicative Guidelines), Guideline I, ¶ 29(d). Another way is to demonstrate that “there is no indication of a current problem.” *Id.*, ¶ 29(e).

In this case, there are no recent indications of any troubling behavior. I found the Individual’s testimony to be candid and forthright. I was particularly impressed by the Individual’s commitment to seek counseling to help him gain insight into whether he has any persisting mental issues and, if so, to help remedy them. The Individual discussed his past employment terminations and explained that, in retrospect, he sees that he may have contributed to the personality conflicts he had with his managers. He does not appear to have such conflicts in his present position. To the contrary, the Individual stated that his professional life is stable and he enjoys his work. In addition, the Individual’s explanation regarding his misunderstanding of the term “law enforcement” is reasonable. Finally, given the Individual’s active involvement in his

county's local EMA, having emergency lights and a public address system in his vehicle does not appear to be unusual.

The hearing testimony also supports the Individual's position that he does not have any current problems associated with his Narcissistic Personality Disorder. Three of the Individual's friends are also either current or former co-workers. Each of those three friends indicated that they never had any problems with the Individual in the workplace. Furthermore, all of the Individual's witnesses testified that he has never held himself out to be a police officer or other law enforcement official. They also stated that he has never over-inflated or exaggerated past experiences to them. To the contrary, they described the Individual as very giving, family-oriented and civic-minded, and uncomfortable with praise. Finally, each of the witnesses corroborated the Individual's statements regarding his involvement with the county EMA.

Finally, I found the testimony of Psychiatrist II to be particularly persuasive. There is evidence that the Individual has had incidents in the past which raise questions about his candor and judgment, particularly in matters of his past employment. In addition, the Individual's results on the MMPI-2 support the Psychiatrist's diagnosis of a Narcissistic Personality Disorder. However, the Psychiatrist was swayed by the hearing testimony which indicated that the Individual has had no recent problems in either his personal life or in the workplace. This led him to conclude that the likelihood that the Individual's Narcissistic Personality Disorder was unlikely to manifest itself negatively in the future.

Based on the record, including the absence of any recent behavior on the part of the Individual which demonstrates a defect in judgment or reliability, I am convinced by the assessment of Psychiatrist II that there is a low risk that the Individual's disorder will create a significant defect in his judgment or reliability in the future. Accordingly, I find that the Individual has resolved the security concerns cited in the notification letter.

V. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criterion H. I also find that there is sufficient evidence in the record to fully resolve that doubt. Therefore, I conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should be restored.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: